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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,730	10/16/2003	Rob Mensching	60001.269US01	4645

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EXAMINER

KHATRI, ANIL

ART UNIT	PAPER NUMBER
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2191

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/21/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/687,730

Applicant(s)

MENSCHING ET AL.

Examiner

Anil Khatri

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application..
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 October 1603 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 8/3/05.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-18 are rejected under 35 USC 101 because they disclose a claimed invention that is an abstract idea as defined in the case *In re Warmerdam*, 33, F 3d 1354, 31 USPQ 2d 1754 (Fed. Cir. 1994).

Analysis: Claims 1-18 disclosed by the applicant as being a “method for retrieving a resource program code...”. Since the claims are each a series of steps to be performed on a computer the processes must be analyzed to determine whether they are statutory under 35 USC 101.

Examiner interprets that the claims 1-18 are non-statutory because they do not disclose that how a cited method is able to carry out its intended results without incorporating a processor, memory and medium. Further, claims 1-18 are non-statutory because claim recites a method in retrieving a source of program code from a source of program code for user profiling, picking a source, opening the resources testing and reading the resource are merely manipulation of code without reciting any structural and functional interrelationship between the computer program and other claimed aspect of the invention, which permits the computer program’s functionality, could be realized. Therefore, computer program is merely a set of instructions capable of being executed by a computer; the computer program itself is not a process. Thus, claims 1-18 are rejected under 35 USC 101.

Further, examiner interpret that claims 12-18 are not limited to tangible embodiments. Claims 12-18 are not limited to tangible embodiments. In view of Applicant's disclosure, specification page 2 lines 18-22 the medium is not limited to tangible embodiments, instead being defined as including both tangible embodiments (e.g., [computer readable medium]) and intangible embodiments (e.g., [transmission media, radio frequency (RF), infrared (IR), a carrier wave, telephone line, a signal, etc.]). As such, the claim is not limited to statutory subject matter and is therefore non-statutory. To overcome this type of 101 rejection the claims need to be amended to include only the physical computer media and not a transmission media or other intangible or non-functional media. For the specification at the bottom, carrier medium and transmission media would be not statutory but storage media would be statutory.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: writing, comparing, generating etc. and reading the resource to the secure cache or reading from the resource to the secure cache.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States:

Claims 1-6, 8 and 10-18 are rejected under 35 U.S.C. 102(b) as being anticipated by *Ramezani* USPN 6,457, 122.

Regarding claims 1, 6 and 12

Ramezani teaches,

impersonating a user profile in the computing system so that the computing system follows the user profile during retrieval of the resource (figure 1, column 3, lines 11-15, over time he user data... other services");
picking a source for the resource (column 3, lines 49-55, "the second software...module);
opening the resource (column 3, lines 59-67, "in an alternative... activates the system);
testing based on the user profile whether the user has access to the resource (column 3, lines 34-41, "the program contained... launch successfully); and
reading the resource to the secure cache if the user has access (figure 3, column 7, lines 53-67, logical diagram... ISUA 86 status).

Regarding claims 2 and 4

Ramezani teaches,

writing the resource into the secure cache (column 13, lines 49-61, if said state.); and

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verifying the resource written in secure cache is same as resource in source (column 14, lines 15-29, "if said state...).

Regarding claim 3

Ramezani teaches,

picking a new source for the resource if the user does not have access (column 10, lines 10-37, "the profile manager... server 22); and

opening the resource in the new source and reading the resource to the secure cache if the user has access to the resource in the new source (column 10, lines 39-48, "when the computer... system firmware).

Regarding claims 5 and 11

Ramezani teaches,

un-impersonating the user profile to return the computing system to the system profile (column 12, lines 33-42, "many advantages...by the user).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Ramezani* USPN 6,457, 122 is taken with *Blaser et al* USPN 7,117,495.

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Regarding claim 7

Ramezani teaches program code recourses but does not teach explicitly extractor module extracting a program code resources contained with. However, *Blaser et al* teaches, (column 10, lines 20-24, after capture... installation program”, column 20, lines 40-67, columns 21-22). Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention was made to incorporate extracting module for extracting program. The modification would have been obvious because one of ordinary skill in the art would have been motivated to combine teaching into resource allocation process with extracting module to user location with another program to execute it at the same time.

Regarding claim 8

Rejection of claim 6 is incorporated and further claim 8 recites limitation as in claim 4, therefore, claim 8 is rejected under same rationale.

Regarding claim 9

Ramezani teaches verifying module but does not teach explicitly a delete module deleting the program code resource from secure cache if the program code resource in secure cache does not match the program code resource in the source. However, *Blaser et al* teaches (figure 7, column 6, lines 44-55, “if a creation...destination layer”).

Regarding claim 8

Rejection of claim 6 is incorporated and further claim 10 recites limitation as in claim 1, therefore, claim 10 is rejected under same rationale.

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Regarding claim 13

Rejection of claim 12 is incorporated and further claim 13 recites limitation as in claim 1, therefore, claim 13 is rejected under same rationale.

Regarding claim 14

Rejection of claim 12 is incorporated and further claim 14 recites limitation as in claim 1, therefore, claim 14 is rejected under same rationale.

Regarding claim 15

Rejection of claim 12 is incorporated and further claim 15 recites limitation as in claim 1, therefore, claim 15 is rejected under same rationale.

Regarding claim 16

Rejection of claim 12 is incorporated and further claim 16 recites limitation as in claim 2, therefore, claim 16 is rejected under same rationale.

Regarding claim 17

Rejection of claim 12 is incorporated and further claim 17 recites limitation as in claim 13, therefore, claim 17 is rejected under same rationale.

Regarding claim 18

Rejection of claim 12 is incorporated and further claim 18 recites limitation as in claim 2, therefore, claim 18 is rejected under same rationale.

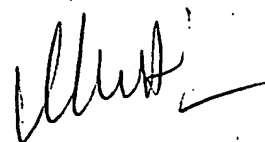
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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anil Khatri whose telephone number is 571-272-3725. The examiner can normally be reached on M-F 8:30-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Zhen can be reached on 571-272-3708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


ANIL KHATRI
PRIMARY EXAMINER